

THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

HONORABLE JANIS L. SAMMARTINO  
UNITED STATES DISTRICT JUDGE PRESIDING

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UNITED STATES OF AMERICA,	)	NO. 15-CR-0033-JLS
	)	NO. 13-CR-3782-JLS
PLAINTIFF,	)	
	)	MARCH 27, 2015
VS.	)	
	)	
MICHAEL VANNAK KHEM MISIEWICZ,	)	STATUS HEARING
	)	
DEFENDANT.	)	

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APPEARANCES:

FOR THE PLAINTIFF: MARK W. PLETCHER  
U.S. ATTORNEY'S OFFICE  
SOUTHERN DIST. OF CALIFORNIA  
CRIMINAL DIVISION  
880 FRONT STREET, SUITE 6293  
SAN DIEGO, CA 92101

FOR THE DEFENDANT: MARK F. ADAMS  
LAW OFFICES OF MARK F. ADAMS  
964 FIFTH AVENUE, SUITE 335  
SAN DIEGO, CA 92101

WENDY S. GERBOTH  
LAW OFFICES OF WENDY S. GERBOTH  
964 FIFTH AVENUE  
SUITE 214  
SAN DIEGO, CA 92101

COURT REPORTER: GAYLE WAKEFIELD, RPR, CRR

1 MARCH 27, 2015

2 AFTERNOON SESSION

3 THE CLERK: NUMBER 20 AND 21 ON THE CALENDAR,  
4 13-CR-3782 AND 15-CR-33, UNITED STATES VS. MICHAEL VANNAK KHEM  
5 MISIEWICZ, FOR STATUS.

6 MR. PLETCHER: GOOD MORNING, YOUR HONOR. MARK PLETCHER  
7 FOR THE UNITED STATES.

8 MR. ADAMS: GOOD MORNING, YOUR HONOR. MARK ADAMS AND  
9 WENDY GERBOTH ON BEHALF OF COMMANDER MISIEWICZ. HE IS PRESENT  
10 BEFORE THE COURT ON BOND.

11 THE COURT: THANK YOU, COUNSEL.

12 I HAVE REVIEWED WHAT'S BEEN PRESENTED BY WAY OF MOTIONS  
13 AND OPPOSITION FOR TODAY, AND I'M STRUCK WITH THE BREADTH OF  
14 EVERYTHING, AND I WAS HOPING, BECAUSE I DON'T BELIEVE THIS HAS  
15 OCCURRED AT THIS JUNCTURE IN THIS CASE, THAT BOTH SIDES SHOULD  
16 MEET AND CONFER IN GOOD FAITH WITH THE GOAL OF NARROWING SOME  
17 OF THESE REQUESTS.

18 I MEAN, IN ALL HONESTY, I UNDERSTAND THE POSITION OF  
19 THE DEFENSE, AND I THINK SOME OF THIS IS PROBABLY PERTINENT TO  
20 THAT. I UNDERSTAND THE GOVERNMENT'S POINT ALSO, BUT I WOULD  
21 THINK IF BOTH SIDES COULD MEET AND CONFER, IT WOULD BE OF GREAT  
22 ASSISTANCE IN COMING UP WITH WHAT IS TRULY AT ISSUE IN THIS  
23 MATTER, BECAUSE MY SENSE IS THIS HAS NOT TAKEN PLACE YET.

24 MR. ADAMS: YOUR HONOR'S SENSE IS CORRECT.

25 THE COURT: OKAY.

1 MR. ADAMS: FIRST, LET ME SAY THANK YOU FOR MOVING THIS  
2 UP TO THIS MORNING. I KNOW YOUR AFTERNOON CALENDAR IS PRETTY  
3 BUSY.

4 COUNSEL AND I HAVE HAD AN OPPORTUNITY TO DISCUSS  
5 GETTING TOGETHER, AND I'M NEW TO THE CASE, WHICH HAS BEEN  
6 QUITE --

7 THE COURT; WELCOME, MR. ADAMS.

8 MR. ADAMS: THANK YOU, YOUR HONOR. IT'S BEEN QUITE AN  
9 EXPERIENCE GETTING COMFORTABLE WITH THE AMOUNT OF DISCOVERY,  
10 AND THE BREADTH OF DISCOVERY, AND WHAT'S IMPORTANT, AND WHAT'S  
11 WHEAT AND WHAT'S CHAFF, AND SO ON, AND I'VE MADE SOME PROGRESS  
12 ALONG THOSE LINES, AND COUNSEL'S BEEN KIND ENOUGH TO INVITE ME  
13 TO COME OVER, ONCE THAT PROCESS IS A LITTLE FURTHER ALONG, AND  
14 MEET, AND SO WE HAVE A MEETING SCHEDULED NOT NEXT WEEK BUT THE  
15 WEEK AFTER.

16 THE COURT: IN A MORE GENERAL SENSE OR WITH THE  
17 SPECIFICITY TO FOCUS ON THIS MOTION AND THE SPECIFIC REQUESTS?

18 MR. ADAMS: THE MEETING SET NOW IS KIND OF IN A GENERAL  
19 SENSE, BUT I THINK IT MAKES SOME SENSE FOR US ALL TO GET  
20 TOGETHER AND KIND OF FLESH OUT WHAT ARE THE SPECIFICS THAT WE  
21 NEED.

22 I KNOW THAT WE RECEIVED YESTERDAY A THUMB DRIVE WITH A  
23 LOT OF DOCUMENTS. I HAD A CHANCE TO LOOK AT SOME OF WHAT'S ON  
24 THAT DRIVE, AND AGAIN IT LOOKS LIKE THOUSANDS OF DOCUMENTS, AND  
25 IT MAY BE PARTIALLY IN RESPONSE TO THE REQUEST WE'VE MADE,

1           THAT'S KIND OF PART OF THE SENSE I GET OF IT, SO I THINK THAT  
2           YOUR HONOR'S CORRECT.

3                   I KNOW THAT MS. GERBOTH DOES WANT TO TALK WITH YOUR  
4           HONOR ABOUT SOME OF THE PARAMETERS BECAUSE WE DO THINK THAT  
5           SOME OF OUR REQUESTS -- MOST OF OUR REQUESTS ARE RELEVANT AND  
6           IMPORTANT.

7                   THE COURT: I UNDERSTAND THAT, AND I WOULD EXPECT YOU  
8           TO THINK THAT, OF COURSE, OR YOU WOULDN'T HAVE MADE THE MOTION  
9           IN GOOD FAITH.

10                  MR. ADAMS: EXACTLY, YOUR HONOR.

11                  THE COURT: I APPRECIATE THAT, BUT I ALSO THINK THERE'S  
12           SOME MERIT TO SOME OF THE GOVERNMENT'S POINTS, AND I THOUGHT  
13           BOTH SIDES, BEING REASONABLE, WOULD BE ABLE TO SIT DOWN AND  
14           MAYBE WORK TOGETHER A LITTLE BIT BEFORE I END UP MAKING THE  
15           CALL, AND WOULD PROBABLY NEED TO SPECIALLY SET THIS AT A TIME  
16           WHEN I COULD TAKE A HALF A DAY AND WE COULD GO THROUGH THIS  
17           BECAUSE I THINK IT'S OF THAT MAGNITUDE, COUNSEL.

18                  MR. ADAMS: THAT MAKES SENSE, THE DISCOVERY REQUEST  
19           BEING SET ON AN OFF DAY, AFTER WE'VE HAD A CHANCE TO MEET AND  
20           CONFER. THERE ARE SOME AREAS WHERE I REALLY THINK WE ARE AT  
21           LOGGERHEADS, AND I THINK WE CAN ADDRESS THAT AND MAYBE GET YOUR  
22           HONOR'S REACTION.

23                  THE COURT: AND I THINK WHEN YOU GIVE ME THAT LIST OF  
24           WHAT YOU'RE ACTUALLY AT LOGGERHEADS WITH, AFTER YOU MEET AND  
25           CONFER, THAT WOULD BE VERY HELPFUL TO ME TO MAKE OUR TIME

1 TOGETHER AS PRODUCTIVE AS POSSIBLE, SO I CAN HAVE MY QUESTIONS  
2 AND CONCERNS SPELLED OUT FOR YOU.

3 MR. ADAMS: I THINK YOUR HONOR HAS INDICATED TODAY, IF  
4 I'M CORRECT, THAT YOU SEE THE RELEVANCE TO OUR DEFENSE IN SOME  
5 OF THE REQUESTS THAT WE'RE MAKING.

6 THE COURT: I UNDERSTAND, AND I UNDERSTAND THEIR POINT,  
7 TOO, AND I'M JUST SAYING THAT I THINK BOTH SIDES MIGHT WANT TO  
8 SIT AND DISCUSS THIS BEFORE IT COMES TO ME.

9 LET ME HEAR FROM MR. PLETCHER AND SEE WHAT HE WOULD  
10 LIKE TO SAY.

11 MR. PLETCHER: THANK YOU, YOUR HONOR. YOUR HONOR AT  
12 PREVIOUS HEARINGS HAS ASKED ME TO PROVIDE AN UPDATE ON THIS  
13 ISSUE, AND I'M GOING TO DO THAT AGAIN RIGHT NOW --

14 THE COURT: EXCELLENT.

15 MR. PLETCHER: -- BECAUSE I THINK SOME OF WHAT WAS  
16 WRITTEN IN THE PAPERS MAY HAVE CLOUDED THAT.

17 THE FIRST THING IS THAT THE MATERIALS THAT HAVE BEEN  
18 COLLECTED IN THIS INVESTIGATION ARE SET OUT ON THIS  
19 APPROXIMATELY 15-TABBED SPREADSHEET IN VARIOUS CATEGORIES.

20 SO THE FIRST ONE IS THINGS THAT WERE SEIZED  
21 INTERNATIONALLY, THINGS THAT WERE SEIZED DOMESTICALLY, THINGS  
22 THAT WERE VOLUNTARILY PRODUCED TO THE UNITED STATES,  
23 INVESTIGATIVE REPORTING, WHICH SET OUT NOT JUST ALL OF THE  
24 INFORMATION THAT WE HAVE SECURED IN THE INVESTIGATION, BUT WE  
25 HAVE PUT IT DOWN BY CATEGORY, BY LINE NUMBER, AND BY BATES

1           NUMBER.   THIS IS THE ENTIRE UNIVERSE OF THINGS IN THE ENTIRETY  
2           OF THE INVESTIGATION, AND YOUR HONOR HAS A GOOD IDEA OF SOME  
3           SCOPE BECAUSE I THINK SOMETHING LIKE 14 CRIMINAL CASES ARE  
4           BEFORE YOU AS RELATED.

5           THOSE THINGS, OF COURSE, ARE NOT ALL PERTINENT TO  
6           COMMANDER MISIEWICZ.   THE THINGS THAT THE INVESTIGATIVE TEAM  
7           HAVE IDENTIFIED PERTINENT TO COMMANDER MISIEWICZ WE'VE  
8           DISTILLED ONTO THIS SPREADSHEET, WHICH WE THEN HAVE PROVIDED IN  
9           ITS ENTIRETY TO THE DEFENSE AS THINGS THAT ARE SUBJECT TO OUR  
10          RULE 16 OBLIGATION, AS THINGS THAT MAY BE SUBJECT TO *BRADY* OR  
11          *GIGLIO*, WITHOUT ATTEMPTING TO SORT OF OTHERWISE MAKE  
12          REFINEMENTS BASED ON RELEVANCE OR ANY OTHER CRITERIA.

13          THOSE ARE THINGS THAT THE DEFENSE CAN GO THROUGH, WITH  
14          THE CAVEAT THAT ANYTHING ON THIS SPREADSHEET THAT THEY  
15          ADDITIONALLY WANT TO SEE CAN BE MADE AVAILABLE TO THEM UNDER  
16          THE PROPER CIRCUMSTANCES.   IF IT'S UNCLASSIFIED MATERIAL, WHICH  
17          THE MAJORITY OF IT IS, WE WILL SIMPLY JUST MAKE A COPY, IF THEY  
18          REQUEST ONE.

19          SO, FOR EXAMPLE, IN THEIR REPLY BRIEF THEY PUT OUT AN  
20          INVESTIGATIVE REPORT THAT'S ON THIS SPREADSHEET, AND IN THE  
21          INVESTIGATIVE REPORT TABS, AT LINES 861, DESIGNATING FOUR  
22          ATTACHMENTS, THEY'RE NOT PARTICULARLY RELEVANT TO COMMANDER  
23          MISIEWICZ.   THE INVESTIGATIVE REPORT HAS BEEN PRODUCED TO THEM.  
24          THE ATTACHMENTS, WHICH ARE FOUR IRRELEVANT CD'S, ARE AVAILABLE,  
25          WHICH THEY CAN REQUEST AT ANY TIME.   SO THE IDEA THAT THE

1 GOVERNMENT HAS PRODUCED THAT WHICH IS ONLY RESPONSIVE TO ITS  
2 PROSECUTION THEORY AND NOT THAT WHICH IS RELEVANT TO THE  
3 DEFENSE IS ENTIRELY ERRONEOUS, AND I GUESS CALCULATED TO  
4 MISLEAD THE COURT ABOUT THE GOVERNMENT'S ATTEMPTS TO FACILITATE  
5 DISCOVERY IN THIS CASE.

6 I DON'T THINK IT BEARS MUCH REMINDER, BUT, OF COURSE,  
7 THE GOVERNMENT HAS TRIED, THROUGH THE PROVISION OF DOCUMENT  
8 MANAGEMENT SOFTWARE, THE ROUTINE OFFERS OF ASSISTANCE WITH I.T.  
9 SUPPORT, TO MAKE SURE THAT THE DOCUMENTS THAT WE ARE  
10 AFFIRMATIVELY PRODUCING ARE ACCESSIBLE, THAT THEY'RE SEARCHABLE  
11 AND, CODABLE TO THE DEFENSE, WITH AN UNDERSTANDING THAT THIS IS  
12 SOMETHING MORE THAN THE FILE THAT COMES IN PERHAPS THE ROUTINE  
13 CASE IN THIS DISTRICT.

14 A COUPLE OF THOUSAND PAGES THAT WERE RECENTLY PRODUCED  
15 ARE JUST THE UPDATE, AS WE PROMISED THE COURT WE WOULD DO FROM  
16 TIME TO TIME. THE INVESTIGATION DIDN'T STOP WHEN COMMANDER  
17 MISIEWICZ WAS ARRESTED. IT DIDN'T STOP WHEN HE WAS INDICTED  
18 THE FIRST TIME, AND IT DIDN'T STOP AT THE END WHEN THE  
19 INVESTIGATION WAS SUPERCEDED.

20 WE HAVE PROMISED THE DEFENSE AND THE COURT THAT WE  
21 WOULD CONTINUE TO PRODUCE ALL THE INVESTIGATIVE REPORTING  
22 THAT'S BEING DONE, INTERVIEWS ACROSS THE INVESTIGATION, WHETHER  
23 RELEVANT OR NOT, SO THAT THE DEFENSE CAN MAKE THOSE  
24 DETERMINATIONS, AND WE'RE CONTINUING TO DO THOSE THINGS.

25 WE'RE ALSO CONTINUING TO UPDATE THE SPREADSHEET AS THE

1 INVESTIGATION CONTINUES. AS IT STANDS, THE INVESTIGATION  
2 CONTINUES TO INVESTIGATE MORE THAN 200 SUBJECTS. WE UNDERSTAND  
3 WE HAVE THIS AND ONE OTHER CRIMINAL CASE THAT ARE PENDING AND  
4 MOVING TO TRIAL, AND WE'RE TRYING TO MOVE THOSE THINGS FORWARD  
5 IN AN ORDERLY AND EFFICIENT BASIS AND IN A WAY THAT WE ARE ABLE  
6 TO USE WHATEVER EXPERTISE WE HAVE ABOUT THE ENTIRETY OF THE  
7 CASE TO FACILITATE THE DEFENSE'S PREPARATION.

8 WHAT WE -- ONE OF THE I THINK CRITICAL DISTINCTIONS  
9 HERE IS WE HAVE OFFERED, OUT OF A MATTER OF PROFESSIONAL  
10 COURTESY, TO GO SEEK FROM OTHER SOURCES, IF WE'RE ABLE,  
11 SPECIFIC DOCUMENTS THAT THE DEFENSE REQUESTS, THINGS THAT ARE  
12 NOT PART OF OUR OWN OBLIGATION, THINGS THAT ARE WITHIN THE  
13 CUSTODY OF PEOPLE IN ANOTHER GOVERNMENT AGENCY OR ANYWHERE  
14 ELSE, IF WE CAN FACILITATE SOMETHING FOR THE DEFENSE.

15 THE DEFENSE HAS STAKED OUT NOW I THINK PERHAPS THEIR  
16 ONLY DEFENSE, WHICH IS THAT COMMANDER MISIEWICZ DID NOT ACT  
17 CORRUPTLY. CERTAINLY THINGS OF VALUE RECEIVED AND OFFICIAL  
18 ACTS TAKEN ON BEHALF OF GDMA ARE PART OF THE EVIDENCE THAT HE  
19 DIDN'T DO SO CORRUPTLY IS WHERE THEY HAVE STAKED THEIR DEFENSE.  
20 WE UNDERSTAND THEIR DEFENSE. WE ARE NOT BOTHERED BY THEIR  
21 DEFENSE, AS SUGGESTED. WHAT WE ARE BOTHERED BY IS WHAT  
22 AMOUNTS, FRANKLY, TO -- WELL, BLATANT DISREGARD OF ANYTHING  
23 THAT THE LAW WOULD UNDERSTAND IS A DISCOVERY OBLIGATION.

24 THE COURT: LET ME ASK YOU THIS, MR. PLETCHER, DO YOU  
25 THINK MEETING AND CONFERRING IS WITHOUT ANY BENEFIT AT THIS



1 POINT?

2 MR. PLETCHER: MEETING AND CONFERRING WILL BE HELPFUL  
3 TO THE EXTENT THAT THE DEFENSE IS WILLING TO OFFER SPECIFIC  
4 DOCUMENTS THAT THE UNITED STATES COULD GO GET AS A MATTER OF  
5 PROFESSIONAL COURTESY. THE UNITED STATES IS NOT GOING TO TAKE  
6 ON ANY AND ALL DOCUMENTS IN THE 7TH FLEET AREA OF  
7 RESPONSIBILITY, IN THE PRESENCE OF THE NAVY, DEALING WITH ANY  
8 7TH FLEET SHIP OVER THE COURSE OF SIX YEARS. WE JUST ARE  
9 SIMPLY NOT GOING TO ASSUME THE UNITED STATES NAVY IS PART OF  
10 THE PROSECUTION TEAM. THE UNITED STATES NAVY IS AN ARM AND AN  
11 INSTRUMENT OF THE DEPARTMENT OF DEFENSE WHO IS CHARGED WITH  
12 KEEPING THIS NATION SAFE. THEY ARE NOT CHARGED WITH CONVICTING  
13 COMMANDER MISIEWICZ IN THIS CASE. WE HAVE, AS A PROSECUTION  
14 TEAM, GIVEN THEM THE DISCOVERY.

15 THE COURT: YOU UNDERSTAND THE NATURE OF THEIR DEFENSE  
16 AND WHY THEY WANT SOME OF THAT.

17 MR. PLETCHER: I ONLY SORT OF UNDERSTAND THE NATURE OF  
18 THEIR DEFENSE, GIVEN THE SORT OF THINGS THAT ARE CHARGED, AND I  
19 KNOW THAT THE COURT HAS READ THE PAPERS. SO I CAN UNDERSTAND  
20 -- IT DOESN'T, FRANKLY, MATTER IF I UNDERSTAND IT.

21 I'M HAPPY TO GO SEEK SPECIFIC CATEGORIES OF DOCUMENTS  
22 FROM SPECIFIC PLACES, BUT, UNDERSTAND, THE LISTS THAT THEY  
23 PROVIDED THAT PURPORTS TO NARROW THE FIELD OF THEIR DISCOVERY  
24 REQUEST INCLUDES DOCUMENTS FROM 101 SPECIFIC INDIVIDUALS, AND  
25 14 ENTIRE CLASSIFIED AND NON-CLASSIFIED COMPUTER SYSTEMS OF THE

1 ENTIRE 7TH FLEET, PACFLT, COMLOG WESTPAC. THE IDEA THAT WE ARE  
2 EVEN DISCUSSING THIS, AS A MATTER OF CRIMINAL DISCOVERY,  
3 BOGGLES MY MIND.

4 THE COURT: THERE'S POINTS OF MERIT ON BOTH SIDES, AND  
5 YOUR POINTS ARE WELL TAKEN, WHICH IS WHY I NEED YOU TO MEET AND  
6 CONFER BEFORE WE CAN TAKE THIS UP AND SEE IF THIS CAN AT ALL BE  
7 NARROWED. WHAT CAN'T BE NARROWED, I WILL DEAL WITH, BUT IT'S  
8 GOING TO TAKE A LITTLE MORE TIME THAN WHAT I HAVE HAD OR HAVE  
9 TODAY.

10 MR. PLETCHER: WHAT I WOULD SUGGEST, YOUR HONOR --

11 THE COURT: I DON'T KNOW HOW MUCH TIME THAT'S GOING TO  
12 TAKE, MR. PLETCHER.

13 MR. PLETCHER: WE'RE HAPPY TO SPEND AS MUCH TIME AS  
14 POSSIBLE TO SORT OF RELIEVE THESE ISSUES. WHAT I WOULD SUGGEST  
15 IS THAT AS WE LOOK FORWARD TO THINGS -- AGAIN, IF THE UNITED  
16 STATES IS GOING TO TAKE UPON ITS OWN BURDEN TO DO THAT ARE  
17 OUTSIDE THE COURSE OF ITS LEGAL OR STATUTORY RULE-BASED  
18 OBLIGATIONS, THAT WE LOOK TO THE CATEGORIES OF DOCUMENTS THAT  
19 WOULD BE OBTAINABLE BY THE DEFENSE UNDER *UNITED STATES VS.*  
20 *NIXON*, THINGS THAT THE DEFENSE COULD GO GET ON THEIR OWN THAT  
21 WE COULD FACILITATE FOR THEM. THAT IS TO SAY, THAT THEY MUST  
22 IDENTIFY DOCUMENTS THAT ARE RELEVANT AND ADMISSIBLE, AND THEY  
23 MUST IDENTIFY THOSE DOCUMENTS WITH SPECIFICITY.

24 SO I'M TALKING ABOUT SPECIFIC DOCUMENTS THAT ARE WITHIN  
25 COMMANDER MISIEWICZ'S KNOWLEDGE. NOW, UNDERSTAND, WE'VE

1           PRODUCED TO THEM ALREADY HIS ENTIRE NON-CLASSIFIED EMAIL  
2           ACCOUNT, SO THE THINGS THAT WERE WITHIN HIS KNOWLEDGE SHOULD  
3           LARGELY BE THERE. WE'VE PRODUCED TO HIM THE ENTIRETY OF  
4           LEONARD FRANCIS'S EMAIL ACCOUNT AND SERVERS THAT WE HAVE SEIZED  
5           FROM GDMA.

6                       SO IF THERE ARE ADDITIONAL DOCUMENTS THAT THEY'RE  
7           TALKING ABOUT, THEN I WOULD LIKE THEM TO IDENTIFY THEM ALONG  
8           THE LINES THAT THE LAW REQUIRES, THAT THE ACTUAL LAW REQUIRES  
9           IN *UNITED STATES VS. NIXON*, AS INTERPRETED BY ANY NINTH CIRCUIT  
10          PRECEDENT THAT THEY THINK IS RELEVANT, AND THEN WE WILL GO AND  
11          -- THEN WE HAVE A UNIVERSE OF DOCUMENTS THAT WE CAN REALLY TALK  
12          ABOUT, BECAUSE THE UNIVERSE OF DOCUMENTS THAT IS SET OUT HERE  
13          IS WITHOUT ANY SPECIFICITY AT ALL. IT'S, "GO FORTH AND SECURE  
14          EVERY DOCUMENT FROM THE 7TH FLEET," AND, AS WE WROTE IN OUR  
15          PAPERS, THAT'S UNBOUNDED IN SCOPE AND SORT OF UNREASONABLE IN  
16          BREADTH.

17                      WE'RE WILLING TO, AGAIN AS A MATTER OF PROFESSIONAL  
18          COURTESY, AS AN UNDERSTANDING OF SORT OF THE BREADTH OF THIS  
19          CASE, WITHOUT PERFECTLY UNDERSTANDING THE DEFENSE, TRY TO  
20          ASSIST THEM, BUT WE'RE NOT WILLING TO DO IT IN THIS KIND OF  
21          POSTURE.

22                      THE COURT:   HOW MUCH TIME DO YOU THINK YOU -- AND I'LL  
23          ASK MR. ADAMS AND MS. GERBOTH THIS QUESTION ALSO.   HOW MUCH  
24          TIME DO YOU THINK YOU NEED FOR THE DEFENSE TO BE AS SPECIFIC AS  
25          THEY CAN BE, BECAUSE THE GOVERNMENT'S GOT A POINT ON THIS, THE

1 WAY IT'S CURRENTLY FRAMED, TO BE MORE SPECIFIC, TO LET HIM  
2 KNOW, TO SEE WHAT HE CAN AND CAN'T DO WITH REGARD TO THAT OR IS  
3 WILLING TO DO UNDER THEIR OBLIGATIONS, THEN TO REFRAME IT AND  
4 BRING IT BACK TO ME? HOW MUCH TIME, AND YOU CAN CONFER OFF THE  
5 RECORD IF YOU WOULD LIKE TO, BUT THAT'S IMPORTANT.

6 MR. PLETCHER: I WOULD LIKE TO POINT OUT, YOUR HONOR,  
7 THAT THE UNITED STATES IS NOT OFFERING AN ITERATIVE CONSUMPTION  
8 OF THE APPLE. THE UNITED STATES ISN'T OFFERING THE ABILITY TO  
9 GO DO VARIOUS THINGS FOR THEM, AS A MATTER OF PROFESSIONAL  
10 COURTESY, FOR THEM JUST TO RESERVE EVERYTHING THAT'S LEFT IN  
11 THIS MOTION FOR DECISION BY THE COURT. IF WE ARE GOING TO COME  
12 TO AN AGREEMENT AS TO THE THINGS THAT WOULD BE OF CIRCUMSCRIBED  
13 UNIVERSE, THEN FINE, BUT IF THE IDEA IS "WE'RE GOING TO TAKE  
14 AND TAKE AND TAKE UNTIL THE GOVERNMENT GIVES NO MORE," AND "WE  
15 CONTINUE TO DEMAND," WE'RE NOT INTERESTED IN THAT AS A  
16 SOLUTION. IT'S NOT A SOLUTION.

17 THE COURT: OKAY. I'M NOT REALLY SURE WHAT EXACTLY  
18 YOU'RE SAYING THERE. SO I WOULD LIKE YOU TO MEET AND CONFER  
19 AND SEE WHAT, IF ANYTHING, YOU CAN AGREE TO. WHAT YOU'RE  
20 SAYING IS IT'S EITHER AN ALL AGREEMENT OR NOTHING?

21 MR. PLETCHER: NOT EXACTLY, BUT THIS IS NOT SOMETHING  
22 THAT WE HAVE AN OBLIGATION TO DO. SO THE FACT OF OUR GOOD  
23 FAITH AND OUR GOODWILL BEING TAKEN ADVANTAGE OF IS, FRANKLY,  
24 SOMETHING THAT I'M NOT READY TO COUNTENANCE.

25 I AM OFFERING THE DEFENSE THE COMMISSION OF THE

1 GOVERNMENT'S RESOURCES THAT COULD BE BETTER SPENT PREPARING FOR  
2 TRIAL, IDENTIFYING EXHIBITS, PULLING TOGETHER WITNESSES. I'M  
3 OFFERING THOSE RESOURCES TO GO WORK ON THEIR BEHALF, AND I'M  
4 NOT WILLING TO LET THAT OFFER IN GOOD FAITH BE SQUANDERED.

5 THE COURT: OKAY.

6 MR. ADAMS: YOUR HONOR, I THINK -- HAVING HEARD MR.  
7 PLETCHER, I APPRECIATE WHAT HE IS TRYING TO SAY, AND I THINK  
8 THAT MEETING AND CONFERRING WOULD BE OF SOME BENEFIT. WE'RE  
9 GOING TO NEED SOME MORE TIME.

10 THE COURT: IT HAS TO BE. WHILE I SAY I UNDERSTAND WHY  
11 YOU'RE MAKING YOUR REQUEST, IT IS EXTRAORDINARILY BROAD, WHICH  
12 MAKES IT EXTRAORDINARILY DIFFICULT FOR THE COURT TO BE PRECISE  
13 WITH REGARD TO ANY OF THIS. SO WE NEED TO GO THROUGH ANOTHER  
14 ITERATION, TO BE HELPFUL TO THE COURT AT LEAST, IF I'M GOING TO  
15 END UP WITH THIS IN MY LAP.

16 I THINK MR. PLETCHER IS MAKING A VERY SPECIFIC POINT  
17 THAT WITH -- WE NEED MORE SPECIFICITY HERE SO THAT YOU AS A  
18 DEFENSE TEAM CAN MEET WITH THE GOVERNMENT'S TEAM AND SEE WHAT,  
19 IF ANYTHING, YOU CAN RESOLVE, AND I THINK HE'S BEEN VERY CLEAR  
20 ON THAT. I HOPE THAT COULD BE PRODUCTIVE FOR BOTH SIDES.

21 MR. ADAMS: AND I JUST STAND UP TO SAY I THINK IT CAN  
22 BE PRODUCTIVE.

23 THE COURT: HOW MUCH TIME DO YOU THINK THAT WOULD TAKE,  
24 MR. ADAMS AND MS. GERBOTH, TO SIT DOWN AND MEANINGFULLY DO? IT  
25 IS A HUGE REQUEST YOU'RE MAKING AT THIS JUNCTURE, AND IT NEEDS

1 TO BE --

2 MR. ADAMS: WELL, RIGHT NOW -- LET ME BACK UP A LITTLE  
3 BIT AND JUST TELL YOUR HONOR, THIS HAS BEEN QUITE A JOURNEY FOR  
4 THE LAST FEW WEEKS FOR ME JUST GETTING A HANDLE ON THINGS.

5 THE COURT: I'M SURE.

6 MR. ADAMS: I WAS PLANNING TO COME IN HERE AND ASK YOUR  
7 HONOR FOR 60 MORE DAYS FOR A FURTHER STATUS HEARING. THAT WILL  
8 HELP US TO FURTHER FOCUS ON THE WITNESSES THAT WE ARE BEGINNING  
9 TO IDENTIFY, THE DOCUMENTS THAT THOSE WITNESSES HAVE, YOU KNOW,  
10 HOW ARE WE GOING TO INTERVIEW SOME OF THOSE WITNESSES, WHO ARE  
11 KIND OF SCATTERED AROUND THE WORLD IN MANY CASES, AND THEN TO  
12 IDENTIFY THE GOVERNMENT'S WITNESSES AND THE DOCUMENTS TO HELP  
13 US TO UNDERSTAND WHAT THOSE WITNESSES HAVE TO SAY, WHAT THEY'VE  
14 SAID IN THE PAST, AND WHAT THE LIKELY CROSS-EXAMINATION OF  
15 THOSE WITNESSES WOULD LIKE LOOK.

16 ONE THING I THINK IN TERMS OF THE DISCOVERY THAT WE  
17 NEED, AND I KNOW MS. GERBOTH WANTS TO ADDRESS THIS WITH YOUR  
18 HONOR, IS KIND OF NARROWING THE SCOPE A LITTLE BIT, BUT ALSO  
19 UNDERSTANDING THE SCOPE OF WHAT WE'RE ENTITLED TO, AND SHE  
20 WANTS TO TALK A LITTLE BIT ABOUT THE OVERT ACTS THAT ARE  
21 IDENTIFIED IN THE CONSPIRACY THAT WE'RE FACING NOW, AND WHAT  
22 UNIVERSE OF DISCOVERY WE WOULD BE ENTITLED TO, AND IF WE COULD  
23 MAYBE --

24 THE COURT: DON'T YOU THINK YOU SHOULD TAKE THAT UP  
25 WITH THE GOVERNMENT? I MEAN --

1 MR. ADAMS: WELL, I THINK IT WOULD HELP TO HAVE KIND OF  
2 THE COURT'S THINKING.

3 THE COURT: I'M NOT GOING TO GIVE YOU PRELIMINARY  
4 THOUGHTS UNTIL YOU FOLKS MEET --

5 MR. PLETCHER: WITH RESPECT TO IF THE DEFENSE IS ABLE  
6 TO PROVIDE WITH SPECIFICITY THE INFORMATION THAT I'VE  
7 REQUESTED, I DO NOT CARE WHAT THEY ASK FOR, AS LONG AS IT'S NOT  
8 CLASSIFIED.

9 THE COURT: HE'S MAKING A REMARKABLE OFFER HERE, FOLKS.

10 MR. ADAMS: I HEAR HIM.

11 THE COURT: BUT WHAT YOU'VE ASKED FOR IS SO EXPANSIVE  
12 AS TO BE INDEFINABLE.

13 MR. PLETCHER: FOR EXAMPLE, YOUR HONOR, IT WOULD TAKE  
14 -- I COULD BE CONVINCED. I COULD SEE A JUSTIFICATION. BUT,  
15 FOR EXAMPLE, DOCUMENTS THAT WERE OUTSIDE OF MR. MISIEWICZ'S  
16 KNOWLEDGE SEEMED TO HAVE VERY LITTLE BEARING ON HIS INTENT.  
17 EVEN IF HIS DEFENSE IS, "I MADE A DECISION FOR SOME REASON  
18 OTHER THAN THE TRIPS AND THE MONEY AND THE THINGS OF VALUE," IT  
19 WOULD HAVE TO BE SOME REASON THAT HE KNEW OF.

20 FOR EXAMPLE, "ANY DOCUMENT OUTSIDE THE SCOPE OF THE  
21 CONSPIRACY COUNT IN THE INDICTMENT" STRIKES ME AS VERY FAR  
22 AFIELD FROM WHAT WE'RE DEALING WITH. SO JUST THOSE TWO THINGS  
23 CARVE, WHAT I THINK IS REASONABLY CONSTRUED, HALF A BILLION  
24 DOCUMENTS THEY'VE ASKED FOR, THAT WOULD CUT THAT UNIVERSE BY  
25 80 PERCENT, SO NOW WE'RE ONLY DEALING WITH 100 MILLION

1 DOCUMENTS. FROM THAT, MY HOPE IS THEY COULD BE ADDITIONALLY  
2 SPECIFIC AS TO PERSON, TIME FRAME, EVENT, SOME WAY TO GIVE THE  
3 UNITED STATES THE ABILITY TO EVEN FIND WHAT THEY'RE LOOKING  
4 FOR.

5 THE COURT: GO AHEAD, MS. GERBOTH.

6 MS. GERBOTH: YOUR HONOR, THE ONE THING, AND IT FOLLOWS  
7 ONTO WHAT MR. PLETCHER IS TALKING ABOUT, WE'RE PERFECTLY  
8 WILLING AND I BELIEVE THERE IS BENEFIT TO GOING BACK AND  
9 MEETING AND CONFERRING. I'M IN AGREEMENT WITH THAT.

10 I DO THINK THAT WE NEED TO HAVE SOME PARAMETERS  
11 SKETCHED OUT. FOR EXAMPLE, THE POSITION THAT THE UNITED STATES  
12 HAS TAKEN THAT OUR DISCOVERY IS LIMITED TO OVERT ACTS ALLEGED  
13 IN THE INDICTMENT, IF THAT'S THE POSITION, THAT DOESN'T ALLOW  
14 US DISCOVERY OF OUR DOCUMENTS FOR OUR DEFENSE OR OF THE  
15 OVERARCHING CONSPIRACY ALLEGATIONS. THERE NEEDS TO BE A  
16 RECOGNITION THAT WE'RE ENTITLED TO DISCOVERY THAT'S OUTSIDE  
17 SPECIFICALLY WHAT THEY HAVE ALLEGED FOR THEIR PROSECUTION CASE  
18 AS OVERT ACTS.

19 MR. PLETCHER: LET'S BE CLEAR WITH MY POSITION. I  
20 DON'T THINK THEY'RE ENTITLED TO ANYTHING. THEY'RE ENTITLED TO  
21 WHAT'S IN THE GOVERNMENT'S SPREADSHEET, BECAUSE THAT'S THE  
22 UNIVERSE OF EVIDENCE CREATED BY THE PROSECUTION TEAM.

23 WHAT I HAVE DONE IS MADE AN OFFER TO ASSIST THEM TO GET  
24 THINGS THAT ARE OTHERWISE ADDITIONALLY RELEVANT THAT THEY COULD  
25 GO GET THEMSELVES UNDER *UNITED STATES VS. NIXON* MAYBE. THE



1 COURT WOULD HAVE TO GRANT THEIR ABILITY TO DO THAT. THE UNITED  
2 STATES NAVY COULD BRING A MOTION TO QUASH THOSE SUBPOENAS, BUT  
3 I WILL TRY TO ASSIST THEM.

4 WE ARE NOT GOING TO, AS THE SUPREME COURT SAID, LET  
5 THIS WHOLE THING DEVOLVE INTO A GENERALIZED FISHING EXPEDITION.  
6 RELEVANT, ADMISSIBILITY AND SPECIFICITY, THOSE ARE THE  
7 TOUCHSTONES OF DEFENSE REQUESTS THAT ARE OUTSIDE OF THE SCOPE  
8 OF DISCOVERY.

9 THE COURT: WHAT MS. GERBOTH SAID THOUGH WAS SHE'S  
10 CONCERNED YOU'RE NOT GOING TO DO ANYTHING BEYOND THE OVERT  
11 ACTS. YOU'RE WILLING TO.

12 MR. PLETCHER: I'M WILLING TO, BUT SHE'S NOT ENTITLED  
13 TO IT AS A MATTER OF LAW.

14 THE COURT: CORRECT.

15 MR. PLETCHER: BUT I'M WILLING TO DO IT AS A MATTER --  
16 TO ASSIST THE DEFENSE AS A PROFESSIONAL COURTESY.

17 THE COURT: THAT'S PRETTY MUCH WHERE I WOULD LIKE TO  
18 LEAVE IT BECAUSE I THINK HE'S WILLING TO ASSIST. I UNDERSTAND  
19 WHY YOU'RE MAKING THAT REQUEST. I ALSO UNDERSTAND THAT  
20 SOMETHING MAY COME RIGHT BACK HERE, AFTER YOU WORK IN GOOD  
21 FAITH, AND I'LL HAVE TO MAKE THOSE CALLS, BUT AGAIN I NEED  
22 SPECIFICITY TO KNOW WHAT I'M TALKING ABOUT, AND RIGHT NOW THE  
23 REQUESTS -- SOME OF THEM ARE BROAD WITHOUT ENOUGH DETAIL AND  
24 SPECIFICITY TO HELP ME WITH IT.

25 I WOULD LIKE TO SET A TIME TO BRING YOU ALL BACK, AFTER

1           THIS HAS TAKEN PLACE, AND I DON'T KNOW HOW MUCH TIME YOU NEED  
2           TO DO THAT OR IF YOU'RE READY TO DO IT, AND WHAT IT'S GOING TO  
3           ENTAIL, BUT I REALLY NEED SOME HARD, TIME-CONSUMING SESSIONS  
4           WHERE, AFTER YOU'VE HAD THE OPPORTUNITY AS A DEFENSE TEAM TO  
5           SAY, "THIS IS AS SPECIFIC AS WE CAN BE," BECAUSE IF YOU CAN'T  
6           BE ANY MORE SPECIFIC OTHER THAN "THE ENTIRE UNIVERSE OF THINGS  
7           OUT THERE," THERE'S GOING TO BE AN ISSUE, FOLKS, AND YOU  
8           UNDERSTAND THAT.

9           MR. PLETCHER IS MAKING -- HE IS SAYING WITHOUT  
10          ANYTHING, FURTHER HE WILL ASSIST YOU, IF THERE'S SPECIFICITY.  
11          SO TO ME THAT INTERMEDIARY STEP OF A GOOD FAITH MEET AND CONFER  
12          IS APPROPRIATELY TAKEN AT THIS POINT.

13          SO MY QUESTION GOES TO HOW MUCH TIME TO DO THAT BECAUSE  
14          THIS IS NOT A QUICK HALF HOUR MEETING, FOLKS.

15          MS. GERBOTH: NO. MR. ADAMS AND I WOULD SUGGEST  
16          60 DAYS.

17          MR. PLETCHER: THAT'S FINE. I MEAN, WE WOULD LIKE TO  
18          RECEIVE WHATEVER -- I DON'T KNOW THAT WE NEED TO SIT DOWN. WE  
19          CAN SIT DOWN ANYTIME THEY WANT, BUT WE'D LIKE TO RECEIVE  
20          REQUESTS THAT HAVE THE REQUISITE AMOUNT OF SPECIFICITY, AND IF  
21          WE RECEIVE THOSE REQUESTS, I WILL DEPLOY PEOPLE -- I KNOW THE  
22          COURT UNDERSTANDS, BUT I WILL DEPLOY PEOPLE ACROSS THE GLOBE,  
23          WHICH IS WHAT IT'S GOING TO TAKE TO GET THE DOCUMENTS THE  
24          DEFENSE ASKS.

25          THESE DOCUMENTS ARE IN SINGAPORE, JAPAN, HAWAII. THEY

1 MIGHT BE ON SHIPS. THEY MIGHT BE ON SUBMARINES. I DON'T KNOW  
2 EXACTLY WHERE THE THINGS ARE GOING TO BE. IF WE ARE GIVEN THE  
3 AMOUNT OF REQUISITE SPECIFICITY TO GO GET SPECIFIC DOCUMENTS --  
4 I'M NOT TALKING ABOUT SOMEBODY'S ENTIRE EMAIL ACCOUNT OVER THE  
5 COURSE OF THE LAST DECADE. I'M TALKING ABOUT DOCUMENTS WITH  
6 THE REQUIRED SPECIFICITY. WE WILL ENDEAVOR TO GET THEM, IF  
7 THEY'RE STILL IN EXISTENCE.

8 THE COURT: I'M GOING TO SUGGEST MAYBE A PRELIMINARY  
9 MEETING TO SET UP HOW YOU'RE GOING TO APPROACH THIS. I AM  
10 WILLING, WITH THE AGREEMENT OF BOTH SIDES, TO CONTINUE THIS  
11 MATTER 60 DAYS, TO A FRIDAY CALENDAR, TO HEAR AN UPDATE ON  
12 WHERE YOU ARE.

13 SO LET'S GO OUT 60 DAYS. I KNOW BOTH SIDES YOU WILL  
14 MEET AND CONFER IN GOOD FAITH AND DO EVERYTHING YOU CAN. I  
15 UNDERSTAND THE REASONS ON BOTH SIDES, AND LET'S SEE IF WE CAN  
16 AT LEAST NARROW THEM DRAMATICALLY FOR THE COURT, OR RESOLVE IT  
17 ALTOGETHER, I DON'T KNOW.

18 GO AHEAD, ALEX.

19 THE CLERK: MAY 29TH AT 2:00 P.M.

20 THE COURT: DOES THAT WORK FOR BOTH SIDES?

21 MR. PLETCHER: IT DOES. THANK YOU, YOUR HONOR.

22 THE COURT: CERTAINLY.

23 MS. GERBOTH: THAT'S FINE, YOUR HONOR. THANK YOU.

24 THE COURT: VERY WELL. THANK YOU.

25 MR. ADAMS: YOUR HONOR, ONE THING I WANT TO --

1 THE COURT: WHEN WE GET TO THE POINT I HAVE TO RESOLVE  
2 THINGS, I AM GOING TO SPECIALLY SET YOU ON A DAY OTHER THAN THE  
3 CALENDAR.

4 MR. ADAMS: OF COURSE, AND THAT MAKES SENSE.

5 THE LAST THINK I WANT TO RAISE IS I THINK BOTH COUNSEL  
6 BROUGHT UP THE ISSUE IN THE PAPERS, AND THAT IS THERE IS  
7 CLASSIFIED INFORMATION. I MEAN, THE GOVERNMENT'S CANDIDLY  
8 ADMITTED THAT THEY'VE WITHHELD CERTAIN CLASSIFIED EMAILS, AND  
9 WE UNDERSTAND THAT. THERE IS THE CLASSIFIED INFORMATION  
10 PROCEDURES ACT, AND MAYBE DURING OUR MEET AND CONFER WE CAN  
11 TALK ABOUT HOW WE'RE GOING TO ADDRESS EITHER THE NEED FOR  
12 CLASSIFIED INFORMATION IN THE TRIAL OR HOW WE'RE GOING TO  
13 HANDLE, UNDER THE ACT, THAT CLASSIFIED INFORMATION, AND WHAT  
14 NEEDS TO HAPPEN, YOU KNOW, GOING FORWARD, AND MAYBE WE CAN EVEN  
15 START THAT PROCESS, IF NECESSARY.

16 MR. PLETCHER: OF ALL THE THINGS THAT HAVE BEEN  
17 COLLECTED, YOUR HONOR, THE UNITED STATES HAS IDENTIFIED ONLY  
18 TWO SOURCES OF CLASSIFIED INFORMATION THAT MIGHT BE RELEVANT  
19 HERE, ONE IS COMMANDER MISIEWICZ'S SO-CALLED SIPR ACCOUNT, AND  
20 THE OTHER IS THAT OF HIS IMMEDIATE SUPERVISOR DURING THE TIME  
21 PERIOD.

22 WE'VE REVIEWED THOSE ACCOUNTS. WE'VE IDENTIFIED  
23 POTENTIALLY 152 RELEVANT DOCUMENTS. THE UNITED STATES IS  
24 WORKING THROUGH THOSE TO SEE WHETHER INFORMATION CAN BE  
25 DECLASSIFIED, WHETHER IT, IN FACT, MEETS THE STANDARD IN SEPA,

1 WHICH IS, OF COURSE, NOT THE SAME STANDARD AS IN RULE 16 OR  
2 EVEN IN *NIXON* -- IT'S A MUCH, MUCH HEIGHTENED STANDARD -- AND  
3 TO SEE HOW WE CAN RESOLVE THAT. I DON'T KNOW THAT, FRANKLY, I  
4 HAVE ANYTHING TO SAY TO MR. ADAMS SUBSTANTIVELY ABOUT THAT  
5 ISSUE NOW. WE MAY TALK ABOUT IT PROCEDURALLY.

6 WITH SEPA, I KNOW THE COURT HAS BEEN THROUGH IT BEFORE,  
7 IF WE NEED TO GO DOWN THAT LONG, WINDING, TORTURED ROAD, WE  
8 WOULD EXPECT TO MAKE AN EX PARTE SUBMISSION TO THE COURT, AND  
9 THEN THE COURT BECOMES INVOLVED EVALUATING THOSE DOCUMENTS, BUT  
10 I THINK THAT'S -- SUBSTANTIVELY THAT'S SEVERAL STEPS DOWN THE  
11 ROAD.

12 MR. ADAMS: I WOULD JUST LIKE TO SAY I'M NOT SURE THAT  
13 THE ROAD IS ALL THAT LONG AND WINDING. I'VE BEEN THROUGH IT  
14 MYSELF IN THIS COURT -- NOT BEFORE YOUR HONOR -- BUT IT'S  
15 MANAGEABLE. IF IT BECOMES NECESSARY, WE'LL FIGURE OUT HOW TO  
16 DO IT. I JUST WANTED TO MAKE SURE --

17 MR. PLETCHER: I'M ENCOURAGED BY MR. ADAMS'S OPTIMISM.

18 THE COURT: WE ALL TRY TO BE OPTIMISTIC.

19 MR. ADAMS: I'VE NEVER WORKED IN THE GOVERNMENT, SO  
20 IT'S EASY FOR ME TO BE OPTIMISTIC.

21 THE COURT: THANK YOU. I'LL SEE YOU ON MAY THE 29TH AT  
22 2:00 P.M. MEET AND CONFER IN GOOD FAITH, AS I KNOW YOU WILL.

23 MR. PLETCHER; THANK YOU, YOUR HONOR.

24 MR. ADAMS: THANK YOU, YOUR HONOR.

25 (THE HEARING CONCLUDED.)

C E R T I F I C A T E

I, GAYLE WAKEFIELD, CERTIFY THAT I AM A DULY  
QUALIFIED AND ACTING OFFICIAL COURT REPORTER FOR THE UNITED  
STATES DISTRICT COURT, THAT THE FOREGOING IS A TRUE AND  
ACCURATE TRANSCRIPT OF THE PROCEEDINGS AS TAKEN BY ME IN THE  
ABOVE-ENTITLED MATTER ON MARCH 27, 2015; AND THAT THE FORMAT  
USED COMPLIES WITH THE RULES AND REQUIREMENTS OF THE UNITED  
STATES JUDICIAL CONFERENCE.

DATED: JUNE 11, 2015

/S/ GAYLE WAKEFIELD  
GAYLE WAKEFIELD, RPR, CRR  
OFFICIAL COURT REPORTER